

CITY OF FRISCO, TEXAS
INDEPENDENT CONTRACTOR AGREEMENT

This Agreement ("Agreement") is made and entered into on September 10, 2008, by and between the City of Frisco, Texas, hereinafter "the City", and Illumimax, LLC a Texas Limited Liability Corporation, hereinafter "Independent Contractor".

For and in consideration of the mutual covenants contained herein, the City and Independent Contractor agree as follows:

1. Independent Contractor. Independent Contractor is and shall at all times and for all purposes be deemed to be an Independent Contractor and shall be wholly responsible for the manner in which he/she performs the services required of him/her by the terms of this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and Independent Contractor or any of Independent Contractor's agents or employees. Independent Contractor assumes exclusively the responsibility for the acts of his/her employees as they relate to the services provided during the course and scope of their employment. Independent Contractor, his/her agents and employees, shall not be entitled to any rights or privileges of the City's employees and shall not be considered in any manner to be City employees, and no tax withholdings shall be made from compensation. Independent Contractor represents that he/she has the proper training and qualifications to perform the services set forth below and that he/she shall only use persons authorized to lawfully work in the United States in performing any services hereunder.
2. Independent Contractor's Duties.

Independent Contractor shall:

- a. Professionally design and operate a computer animated "Holiday Lighting Show" synchronized with four (4) different musical arrangements from November 28, 2008 through January 1, 2009 at the George A. Purefoy Municipal Center.
- b. Contractor shall ensure that the Holiday Lighting Show shall operate nightly between the hours of 5:30pm and 10:00pm beginning on November 28, 2008 and ending on January 1, 2009. Any variations from this schedule shall be determined at the joint discretion of the City and Frisco Square Development. A final, nightly lighting schedule will be signed off no later than November 28th, 2008, by the City, Independent Contractor, and Frisco Square Development.
- c. Monitor status of Holiday Lighting Show and provide an e-mailed status report each Friday during the term of this Agreement. Any known problems with any aspect of the Holiday Lighting Show, including but not limited to:
 - i. Technical issues for which the Independent Contractor is directly responsible;
 - ii. Installation issues (including but not limited to dead bulbs) for which the City is directly responsible;
 - iii. Equipment performance issues for which either the Independent Contractor or the City is directly responsible;

which prevent the Independent Contractor from performing his duties shall be immediately reported by the party which first becomes aware of the problem to the other party. During hours of Holiday Lighting Show operation as listed in section 2.b, Independent Contractor will make every effort to respond onsite within 1 hour to reported Holiday Lighting Show problems as outlined in section 2.c.i and 2.c.iii above and will work until resolved. Independent Contractor has no responsibility for natural

disasters or weather-related issues or problems that prevent the proper operation of the Holiday Lighting Show, including but not limited to GFI resets and lighting strikes. The City will provide adequate access to the city hall building, after-hours on-call personnel and equipment to assist with, respond to, and repair any issues with the Holiday Light Show.

- d. Utilize the period starting Friday, November 21st until Thursday, November 27th to test the Holiday Light Show. The City shall ensure that all installation aspects of the display (including but not limited to installation of lights, extension cords, and power feeds) are place no later than Friday, November 21st at 5:00 pm. This will allow Independent Contractor adequate time to properly test and setup the Holiday Light Show. A delay in the completion of the City's installation duties will result in a corresponding delay in the full operation of the Holiday Light Show.
3. Term. The term of this Agreement will commence upon acceptance and approval by authorized representatives of City and continue through January 1, 2009 or until terminated earlier for cause.
4. Compensation and Billing.
 - a. The City agrees to pay Independent Contractor the sum of twenty thousand dollars (\$20,000.00) for compensation which fee shall be paid to Independent Contractor in one lump sum upon performance of the duties listed in Paragraph 2 above satisfactorily to the City no later than December 31, 2008.
 - b. All necessary and reasonable business expenses incurred by the Independent Contractor in performance of the Duties will be reimbursed by the City at the request of the Independent Contractor and approval of the City.
 - c. Any change orders for duties performed outside of this Agreement shall be explained in writing by the Independent Contractor and authorized at the sole discretion of the City.
 - d. Independent Contractor shall provide, upon request by the City, any and all tax-related information as deemed necessary by the City for compensation under this section.
5. **Indemnity. CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES**

OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS' COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

6. Notice. Any notice that is required under this Agreement shall be in writing and sent by Certified Mail, Return Receipt Requested, to the address contained in the signature block of this Agreement.
7. Assignment of Agreement. Independent Contractor shall not assign, transfer or subcontract any of his/her rights, burdens, duties or obligations under this Agreement.
8. Place of Performance. All obligations to each party of this Agreement shall be performable in Collin County, Texas. Exclusive venue, in the event of a suit, is in Collin County, Texas.
9. Full Intentions of Parties. This Agreement represents the full intentions of the parties and shall be interpreted according to the laws of the State of Texas.
10. Entire Agreement. This Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the performance under this Agreement exist between the parties. This Agreement can be modified only by an agreement in writing, signed by both parties.
11. Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

CITY OF FRISCO, TEXAS

INDEPENDENT CONTRACTOR

By: _____

George Purefoy , City Manager
6101 Frisco Square Blvd.
Frisco, Texas 75034

Date: _____

By: _____

Jeff Trykoski, President
Illumimax, LLC
4015 Bryson Drive
Frisco, Texas 75035

Date: _____